89- 1579

No. _____

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1989

MARY CELESTE GRIFFING,
PETITIONER,

v.

THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC.,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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QUESTION PRESENTED

Whether, in a Section 1983 action brought by a woman whose liberty interest in the care and custody of her four young children was extinguished without notice, the state-licensed agency alleged to have taken the children and placed them for adoption in derogation of due process was entitled to summary judgment based on an immunity derived solely from the existence in its files of court orders purporting to terminate parental rights, where no record of these orders exists as required by law; and where petitioner presented affirmative evidence that the orders are invalid, and that the agency knowingly participated with a county judge to take permanent custody illegally.

TABLE OF CONTENTS

Question Presented i

Table of Contents iii

Table of Authorities iv

Petition for Writ of Certiorari 1

Decision Below 1

Jurisdiction 2

Constitutional Provision Involved 2

Statute Involved 2

Statement of the Case 3

Reason for Granting the Writ 20

The State Court Decisions Are in Conflict With Immunity Principles Governing Actions Under 42 U.S.C. 1983

Conclusion 26

Appendix 1a

TABLE OF AUTHORITIES

CASES

Anderson v. Creighton, —U.S.—, 107 S.Ct. 3034 (1987) . . . 24

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) . 22, 23, 25

Armstrong v. Manzo, 380 U.S. 545 (1965) 21, 24

Chapman v. Dept. of Health and Rehabilitative Serv., 517 So.2d 104 (Fla. 3d DCA 1987) 19

Davis v. Scheur, 468 U.S. 183 (1984) 24

Dennis v. Sparks, 449 U.S. 24 (1980) 21, 22

Duchesne v. Sugarman, 566 F2d 817 (2d Cir. 1977) 21

Gomez v. Toledo, 446 U.S. 635 (1980) 23

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 24

Malley v. Briggs, 475 U.S. 335 (1986) 25

Martinez v. California, 444 U.S. 277 (1980), rehearing denied, 445 U.S. 920 (1980) 23

May v. Anderson, 345 U.S. 528 (1953) 24

Meyer v. Nebraska, 262 U.S. 390 (1923) 24

Owen v. City of Independence, 445 U.S. 622 (1980) 19,23

Parks v. City of Homestead, 414 So.2d 1142 (Fla. 3d DCA 1982) 19, 23

Penthouse, Inc. v. Saba, 399 So.2d 456 (Fla. 2d DCA 1981), review denied, 408 So.2d 1095 (1981) 19

Skinner v. Oklahoma, 315 U.S. 535 (1942) 24

Stanley v. Illinois, 405 U.S. 645 (1972) 20, 25

Tower v. Glover, 467 U.S. 914 (1984) 21

West v. Atkins, —U.S.—, 108 S.Ct. 2250 (1988) 20

STATUTES

28 USC 1257(3) 2

42 USC 1983 . . . . . *passim*

Fla. Stat. §39.01(31) (1988) 4

1951 Fla. Laws, c. 26880, §1 . . . . . .4, 16

OTHER AUTHORITY

Rule 9.030(a)(2), Florida Rules of Appellate Procedure, *Florida Rules of Court-State* (West, 1990 Ed.) 20

Rule 1.510(c), Florida Rules of Civil Procedure, *Florida Rules of Court-State* (West, 1990 Ed.) 18

Florida Evidence Code, sec. 90.902(2), *Florida Rules of Court-State* (West, 1990 Ed.) 13

No._____

IN THE

Supreme Court Of The United States

October Term, 1989

MARY CELESTE GRIFFING,
Petitioner,

v.

THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Mary Celeste Griffing ("petitioner" hereafter) prays that this Court review on *certiorari* the judgment of the District Court of Appeal of Florida, Third District, which affirmed without opinion a summary judgment entered for the Children's Home Society of the State of Florida, Inc. ("respondent" hereafter) by the Circuit Court of the 11th Judicial Circuit in and for Dade County ("Circuit Court" or "trial court" hereafter).

DECISION BELOW

The unpublished order granting "Summary Final Judgment" to respondent is set out in the Appendix, at 1a–2a.

JURISDICTION

The District Court of Appeal of Florida, Third District, affirmed without opinion on October 17, 1989, Appendix 3a, and on January 10, 1990 denied rehearing, or rehearing *en banc*. Appendix 4a. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

U.S. CONST. Amend. XIV, §1

* * *

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law....

STATUTE INVOLVED

42 USC 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

STATEMENT OF THE CASE

Petitioner filed suit against respondent in February 1987, alleging claims under 42 USC 1983 and Florida common law based upon respondent's knowing participation in the termination of her parental rights in four young children without notice or opportunity to be heard; and its subsequent concealment of the fact that it had taken custody of petitioner's children and caused them to be placed for adoption.

Petitioner alleged that in 1959 she was a citizen of Florida residing in Key West, Monroe County. Separated from her husband, she had sole custody of her four children, Debra Anderson, age 6; Wayne Goldman, 5; Robin Goldman, 3; and Adrienne Goldman, 1. Amended Complaint, ¶5.[1]

In October 1959, petitioner was convicted of a misdemeanor arising from unauthorized travel aboard a government aircraft. She was sentenced to three months imprisonment, during which she was forced to entrust her children to the care of a babysitter. *Id.*, ¶6. Upon her release in February 1960, petitioner discovered that her children were missing. *Id.*, ¶8. It was to take her almost twenty-five years to learn what became of them. *Id.*, ¶23.

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[1] Petitioner filed her Complaint February 27, 1987, which she amended on March 18, 1987, in respects not relevant here. Respondent answered this Amended Complaint, and for this reason petitioner refers to it.

Petitioner alleged that following her release from prison she immediately set about contacting local, county and state officials, all of whom denied knowledge of her children or their whereabouts. *Id.*, ¶11.

She sought assistance from the Clerk of Court for Monroe County, but was told that there existed no record concerning either the temporary or permanent termination of her parental rights. *Id.*, ¶12.[2]

Petitioner also traveled to Dade County in search of her children, and there made the first of many inquiries to respondent,[3] *id.*, ¶¶14-17, whose officials denied having any knowledge of petitioner's children. *Ibid.* For a period of twenty-three years, respondent's officials repeatedly denied having any information about petitioner's children. *Id.*, ¶21.

In 1984, petitioner finally learned what had happened: An investigative reporter working for ABC News discovered that respondent took custody of petitioner's children in 1960, and thereafter caused each of them to be placed for adoption. *Id.*, ¶¶22-23.

Petitioner's claims of constitutional deprivation under 42 USC 1983 were alleged, in most pertinent part, as follows:

* * *

> 28. Plaintiff...possessed a federal constitutional right to family privacy and the integrity of her family

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[2] Florida laws required that orders respecting the temporary or permanent deprivation of custody rights be maintained permanently; and that natural parents have access to these records. 1951 Fla. Laws, c. 26880, §1 (current version at Fla. Stat. §39.411 (1988)). Appendix 20a.

[3] Respondent is a Florida corporation, Amended Complaint, ¶3, and at all relevant times has been a "licensed child placing agency," Fla. Stat. §39.01(31) (1988) (originally enacted by 1951 Fla. Laws, c. 26880, §1), "a person, society, association or institution licensed by the state welfare board to care for, receive, or board children, and to place children in a...foster or adoptive home."

unit guaranteed by the United States Constitution, including the Fourteenth Amendment to the Constitution.

29. On or about January, 1960, the Plaintiff's four children were illegally taken from the custody of the Plaintiff's babysitter in Key West, Florida. The children were taken without providing the Plaintiff with legally sufficient notice, or a hearing conforming with the requirements of due process justifying the termination of the Plaintiff's parental rights.

30. At all times material, Defendant CHS was acting under color of state law. Defendant CHS unconstitutionally used state procedures to exercise functions pertaining to the taking of children into custody and removing them from their parents. This was a function which was the exclusive prerogative of the State, and CHS exercised this function with the help of State officials causing a deprivation of the Plaintiff's rights to a family relationship as guaranteed by the United States constitution.

31. At all times material, CHS acted in concert with State officials, or obtained significant aid from State officials in conjunction with the unconstitutional taking of the Plaintiff's four children.

32. On or about January, 1960, Defendant CHS took physical custody of the Plaintiff's four children: Wayne, Debra, Robin and Adrienne.

33. Defendant CHS took custody of the Plaintiff's children without her consent and without assuring that the Plaintiff had been accorded due process as required by the United States Constitution and state law.

34. At the time CHS took physical custody of the Plaintiff's children, CHS had actual knowledge, or in the exercise of reasonable care should have known, that the Plaintiff had not been provided a hearing or notice

authorizing the termination of the Plaintiff's parental rights.

35. After taking custody of the children, Defendant CHS was further repeatedly advised that the Plaintiff's children were taken from her without providing the Plaintiff a hearing, but CHS acting under color of state law ignored these notifications and retained custody of the Plaintiff's four children although it had actual knowledge that it had no lawful right to keep custody of the children from the Plaintiff.

36. Nevertheless, Defendant CHS kept custody of the four children for an extended period of time and then gave the children up for adoption — permanently depriving the Plaintiff of the love, companionship and parentage of her children.

Amended Complaint.

Respondent answered on September 8, 1987[4], asserting a general denial and a number of "affirmation defenses," including that "the Plaintiff's damages, if any, were the result of the action of third-parties over whom this Defendant has no control or custody...." Answer to Amended Complaint, ¶4.

Following discovery, respondent moved for summary judgment. It submitted a supporting affidavit from respondent's current president. Notice of Filing, Affidavit of Stephen S. Zaricki, April 15, 1988. Though he had no personal knowledge of the events at issue, he asserted that two of petitioner's children were permanently committed to

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[4] Respondent had moved to dismiss on May 7, 1987, on grounds of statute of limitations and laches, and also asserted a failure to state claims under 42 USC 1983 and Florida law. Defendant's Motion to Dismiss. On August 20, 1987, the Circuit Court entered an order deferring a ruling until the time of trial. Order on Defendant's Motion to Dismiss Amended Complaint.

respondent's custody on April 7, 1960, *id.*, ¶2; and that her remaining two children were permanently committed to respondent's custody on August 29, 1961. *Id.*, ¶2. It was further alleged that "[t]he permanent commitment of each of the...four children...was founded on Court Orders issued by the Juvenile Court of Monroe County, which found each of these children to be dependent on the State of Florida for their care," *id.*, ¶4; and that respondent could find no record of any inquiry from petitioner, which would have been documented in its files. *Id.*, ¶¶10-12.

Attached to this affidavit were uncertified copies of orders purported to have been entered by the Juvenile Court of Monroe County in 1960 and 1961. Appendix 5a–16a.[5]

The "orders" in question indicate that each purported custody proceeding was initiated on petition of one "Roberta Pettie, Child Welfare Supervisor" of the State Department of Public Welfare. *Ibid.* Ms. Pettie, however, supplied an affidavit for petitioner in which she denied any knowledge of the custody proceedings purported to have taken place, and alleged that the orders were irregular and inconsistent:

> 1. My name is Roberta Pettie. I am over eighteen years of age, legally competent, and testifying based upon personal knowledge. I currently reside in Monroe County, Florida.
>
> 2. I worked as a child welfare supervisor for Monroe County, State of Florida, Department of Public Welfare from 1957 to 1976.
>
> 3. During that time I routinely dealt with the Children's Home Society as an agency that received

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[5] These are form documents in which specific representations about the children have been crudely inserted by typewriter. The reproductions in the Appendix cannot reflect this; nor can they reveal places in which form language has been altered by typewritten insertions.

children from the State of Florida for both temporary and permanent commitment. I have reviewed the copies of what purport to be court orders that were filed by the defendant in the above captioned matter....

4. The defendant has produced a xerox copy of a document purporting to be a court order issued on April 7, 1960 placing Deborah [sic] Michelle [sic] Anderson in the custody of the Children's Home Society. [Appendix 5a–6a] This order states that I filed the petition and that the child was brought before the court and there was an evidentiary hearing. It does not indicate that the child's mother was in court. Contrary to the statements contained in that purported order, I did not file this petition or appear in court on that matter.

5. There is a second copy of a purported court order referring to Deborah Michelle Anderson that is dated August 29, 1961 and which purportedly terminates the parental rights of the natural parents.[Appendix 7a–8a] This order states that I was before the court along with the child and the mother on April 7, 1960. It then terminates the parental rights on August 29, 1961, approximately a year and a half later. I was not before the court for any hearing terminating parental rights on April 7, 1960 or any date thereafter pertaining to this child. Based upon my experience, I think that these orders are irregular. For example, it is unusual that parental rights were terminated based upon a preliminary hearing held a year and a half earlier for the purpose of initial commitment to a child caring agency. It is also unusual that one order states that the mother was present on April 7, 1960, while the other order does not.

6. The defendant has also provided purported orders regarding the commitment of Wayne Andrew Goldman. [Appendix 9a–12a] These orders are virtually the same as the ones regarding Deborah, they contain the same dates and make the same representations.

However, I was not present at any hearing regarding Wayne Andrew Goldman. These orders reflect the same inconsistencies as the orders concerning Deborah.

7. The defendant has also submitted a purported order regarding Robin Jeanette Goldman.[Appendix 13a–14a] This purported order is dated April 7, 1960 however [sic] it discusses a hearing that allegedly occurred on February 4, 1960 and states that I was present before the court with Robin Jeanette Goldman. It states that the cause was heard due to a sworn petition filed by me and the order states that it is committing the child to the Children's Home Society for subsequent adoption and terminating the rights of the natural parents. I was not at a hearing on February 4, 1960 to terminate the parental rights and permanently commit Robin Jeanette Goldman to the Children's Home Society. Based upon my experience, this order seems unusual because it was not signed until April 7, 1960 and is inconsistent with the other two orders regarding Robin's siblings, Deborah and Wayne.

8. Additionally, the defendants have filed a purported order of permanent commitment regarding Adrian [sic] Celeste Goldman that is virtually the same as the order concerning Robin Jeanette Goldman.[Appendix 15a–16a] This order also states that I filed a petition and was present at a hearing. I was not at a hearing regarding Adrian Celeste Goldman. This order has the same inconsistencies as the order concerning Robin.

9. Finally, I was not present at any court hearings for any of these four (4) children. Based upon my nineteen years of experience as a child welfare supervisor for Monroe County, I believe these orders appear both irregular and inconsistent with one another.

Plaintiff's Notice of Filing Affidavits in Opposition to Defendant's Motion for Summary Judgment, May 26, 1988. Affidavit of Roberta Pettie.

Petitioner also submitted an affidavit. *Id.*, Affidavit of Plaintiff Mary Celeste Griffing. She denied ever having appeared in, or having notice of, proceedings to deprive her of custody, on a temporary of permanent basis. *Id.*, ¶¶5-6. She alleged that she contacted the Clerk of the Circuit Court for Monroe County during 1960 and 1961 and had been told that no record existed of any custody proceedings pertaining to her children. *Id.*, ¶9. She alleged further that "[d]uring my numerous inquiries to The Children's Home Society commencing in 1960 I made it clear to representatives of The Children's Home Society that I knew nothing pertaining to the circumstances causing the disappearance of my children and, therefore, gave actual notice...that my children had been taken from me without a hearing or any sort of due process." *Id.*, ¶12.

In a hearing on its motion for summary judgment, respondent relied almost exclusively on the evidence of the "orders" in its files:

> [W]e have an affidavit by Steven [sic] Zaricki....whereby we attached all of the Monroe County Court orders that were received by the Children's Home Society in 1960 establishing that Court hearings had been held, that notice had been given and that the children were being turned over to us by the State of Florida pursuant to hearing and notice given to the Plaintiff. And that we, acting on those particular orders, went ahead and took the children and ended up putting them up for adoption.
>
> The record is unrefuted in this case that that is exactly what occurred. Meaning that the Children's Home Society's role was based solely on the State of Florida coming to it, providing it with Court orders and telling it, based on the statute dealing with children's home care facilities in the State of Florida, to do exactly what

this Defendant's business was, which was to take care of children and put them up for adoption.

Transcript of Proceedings, May 27, 1988, pp. 4-5.

Petitioner's counsel responded in part as follows:

[T]he law back in 1955, the law in 1960 and the law all the way through to today is that any orders for the permanent commitment of children must be kept permanently by the Clerk of the Court. We have our client who went to the Clerk of the Court in '60 and '61 and no such orders existed. They haven't come forward with certified copies. That in and of itself raises a genuine issue of material fact as to the genuineness of the orders.

* * *

Secondly, your Honor, we have alleged there were breaches of duty on the part of Children's Home Society. There were breaches of duty under State law and breaches of duty under the Federal Constitution.

We have said that our client lost her children in February of 1960. When she came back in February, 1960 to her home her children were missing and no explanation as to why her children were gone. She has said under oath there was no Court hearing. The record in this case shows the Children's Home Society took custody of these children in January of 1960. There was no legal authorization for them to take custody in January of 1960 even under their version of the facts. The earliest of these Court orders is dated in April, of 1960.

There are two Court orders that are dated as late as August of 1961. This has raised some very real question about the validity of these orders and we have supported our opposition with a memo of law saying that if there is any question as to the validity of a Court order, the person that received a Court order can't rely on it.

Also, there is no showing the Children's Home Society ever received certified copies of Court orders. There has been no showing there are any official records pertaining to the taking of these children.

We have said that our client went to the Children's Home Society in 1960 when she discovered that her children were missing and she said to the Children's Home Society, "My children have disappeared. Do you know anything about the children? I didn't have a hearing."

The response of the Children's Home Society was essentially, "We don't know anything about your children."

They were put on notice first by the invalidity of these orders on their face that there wasn't a hearing.

Secondly, our client went to them and gave them actual notice there wasn't any due process. And they continued to participate in the permanent deprivation of her four children from her.

We alleged this in our Complaint specifically. We have alleged it in the affidavit in which our client has factually said she put them on notice.

* * *

Furthermore, your Honor, we have in our memo of law supporting our motion by Federal cases and of course Federal cases are applicable to our claim under Section 1983, U.S. Code, and those cases as recently as

two years ago from the United States Supreme Court say that when a person has a judicial authorization, a judicial order, that this in and of itself on its face does not insulate an official if the order is invalid on its face or if the official had something to do with the procuring of the order.

We know under the factual record that the Children's Home Society was involved with these children and the custody of these children in January of 1960. We know the last order pertaining to the permanent deprivation of these children from their mother was dated in August of 1961.

So, there are issues of fact as to whether this Defendant was involved in the procurement of the deprivation of these children from their mother.

Transcript of Proceedings, May 27, 1988, pp. 12-16.

The fact that no record of the orders existed in the Monroe County Court, *id.*, pp. 7, 11, troubled the judge a great deal. *Id.*, 21 ("I've just never in all my years...have ever encountered when [sic] there is not some record of some orders having been entered somewhere.") Nevertheless, he made clear that if the signatures appearing on the documents were in fact genuine[6], he would find respondent "immune from any litigation," *id.*, p. 20, and grant summary judgment:

What I'm going to do anyhow in view of these allegations on which I think the case pretty much turns, I don't mind telling you all. I'm talking about Summary Judgments whether these are valid orders or not. If they're

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[6] Florida rules of evidence provide that "[e]xtrinsic evidence of authenticity as a condition prededent to admissibility is not required for...[a] document not bearing a seal but purporting to bear a signature of an officer [of a court]...affixed in his official capacity." Florida Evidence Code, §90.902 (2), *Florida Rules of Court–State* (West 1990 Ed.)

> valid orders I'm going to grant a Summary Judgment. I'm going to tell you that. If they're not valid orders, of course, I'm going to deny the Summary Judgment, simple as that. To me it's crucial to my ruling that you determine whether or not these are valid court orders or forgeries as there is some allusion to.
>
> So, you all are going to have to set out to either find out if such orders were ever entered, as I said, by way of a handwriting expert, determine whether or not this is that Judge's signature and so forth. If they're valid Court orders there is no question in my mind that the Children's Home Society is immune from any litigation and grant their Summary Judgment.
>
> But if you can't establish the validity of those orders I will deny it and let you proceed.

Id., pp. 19-20.

Thereafter, a handwriting expert certified that the signatures on the documents did in fact appear to be genuine, Defendant's Notice of Filing Affidavit of Ronald M. Dick in Support of Defendant's Motion for Summary Final Judgment, December 2, 1988, a determination which petitioner did not challenge.

Petitioner did, however, enter on the record a document which cast further doubt upon both the validity of the orders, and respondent's disavowal of any knowing participation in securing the orders—and the children—in the absence of notice to petitioner. It also called into question the extent to which respondent had been fully responsive to petitioner's discovery requests. Notice of Filing Exhibit "C" to Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, September 2, 1988.

This was a letter dated March 10, 1960 from one of respondent's officials to the judge in Monroe County whose signature appears on the orders. Though apparently taken from respondent's own records, it was furnished to petitioner

not by respondent but by a third party. Transcript of Proceedings, January 3, 1989, p. 3. Its text was as follows:

> This will confirm my telephone conversation with you yesterday, March 9, 1960, regarding Judith Goldman's [petitioner's] four children. As I stated on the telephone, we feel it is important that you know the position of The Children's Home Society of Florida regarding these children.
>
> We have had Robin Jeanette and Adrienne Celeste, the two younger children, in one of our foster homes since January 19, 1960 . . . However, Deborah Michelle Anderson and Wayne Andrew Goldman were placed in the American Children's Home and we do not know them, inasmuch as we have not received our material until this week. For this reason it is necessary for us to say to you that we are not in a position to be able to accept permanent commitment on these two older children, namely, Deborah and Wayne, at this time.
>
> However, we want you to know that we are very willing to have you give us temporary commitment on these two older children. If you can see fit to do this, we would then let you know when we have completed our preadoptive study on them and should this indicate they are adoptable, we would then send you a request for permanent commitment of the two older children.
>
> Based on our present findings, we expect to send you our request for permanent commitment of Robin and Adrienne, the two younger children, at the time of the hearing on March 23, 1960.

> You will recall our discussion of the handling of this on the same basis as the H_____ Children, whom you committed to us under the same circumstances. Please be assured of our desire to work with you and Mrs. Pettie in the best interest of these dependent children. Perhaps I should say here that I expect to furnish some material to Mrs. Pettie regarding our experience of approximately two months with these two younger children.
>
> I would appreciate your letting me know whether or not this plan is acceptable to you.

Appendix 17a–18a.

This letter revealed that respondent had engaged in informal, *ex parte* communications directed to securing custody orders during the very period when petitioner contends she was searching frantically for the children. It confirmed moreover that during this same period respondent had taken custody of Robin and Adrienne in the absence of any judicial order.[7] It also suggested that hearings on the permanent custody of these two younger children may not have taken place February 4, 1960, as recited by the "Orders of Permanent Commitment" of April 7, 1960.[8] The writer does not mention any such hearings, though they presumably would bear upon, if not

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[7] Florida law then authorized only a law enforcement officer or "counselor or assistant counselor" of the juvenile courts to take custody of a child without a court order where "the welfare of the child require[d] [it]," 1951 Fla Laws, c. 26880, §1 (current version at Fla. Stat. 39.401 (1988)), Appendix 19a, while mandating that the person "notify the parents...of the child.....at the earliest practicable time, and...deliver the child,...*if the judge has so ordered*, to a ...licensed child caring institution...." (emphasis added). *Ibid.*

[8] These orders are irregular in a way not mentioned by Ms. Pettie: Neither bears a case number. Appendix. 13a, 15a.

indeed obviate the need for, the "request for permanent commitment of Robin and Adrienne" which the writer anticipates.

Petitioner addressed the factual issues generated by this document in a supplemental hearing on respondent's motion for summary judgment:

> We have the Children's Home Society procuring their own orders. We have ex-party [sic] communications with the judge. We have the children with the Children's Home Society without any court orders and I also point out in January when they say they had the children, the Plaintiff was in federal prison as the Court may remember. The Plaintiff got out of prison in February and her testimony is in her affidavit she started asking for these children and nobody knew anything about it. There weren't any court orders in the courthouse and there aren't to this day.
>
> She started asking about her children and it appears, and the Plaintiff submits when she started asking for her children, the Children's Home Society started asking the judge for court orders.

Transcript of Proceedings, January 23, 1989, pp. 4-5.

For its part, respondent continued to rely heavily upon the orders:

> In this case these orders are proper. If there is any irregularity, which I submit there isn't, even if there were under the statutes, it's clear. The plaintiff hasn't come forth with one witness to say that anyone at the Home Society had any knowledge of irregularities, had [sic] not stated the Home Society did anything improper in this case, and that it specifically relied on court orders under the law were deemed to be correct orders. In light of that we think there are no issues in this matter and we're entitled to a summary judgment.

Id., pp. 7-8.

The court determined to grant summary judgment for respondent, *id.*, p. 15, while denying petitioner the opportunity for additional discovery to develop, *inter alia*, issues generated by the letter and respondent's failure to produce it. *Id.* , pp. 3, 15. On February 3, 1989, the court entered a "summary final judgment" on the record.[9] Appendix 1a–2a.

On February 24, 1989 petitioner noted an appeal to the Third District Court of Appeal of Florida, Third District. She argued, in most relevant part, that summary judgment on petitioner's Section 1983 claims was improper where she had been unable to complete discovery; and where respondent's knowing participation in the unlawful taking of petitioner's children, and the objective reasonableness of its purported reliance on the orders in question were very much in issue. Initial Brief of Appellant, June 23, 1989, pp. 9-26. Respondent argued, in sum, as follows: "[T]he alleged factual vagaries [sic] asserted by appellant are irrelevant to any consideration of the propriety of summary judgment." Answer Brief of Appellee The Children's Home Society of Florida, Inc., July 25, 1989, p. 7; and "the juvenile court orders . . . unequivocally establish that [respondent] did not participate in or instigate the taking of [petitioner's] children; rather, [it] simply received these children pursuant to those valid juvenile court orders." *Id.*, p. 8.

With respect to the letter dated March 10, 1960, respondent argued that it "is insufficient to create any liability. [It] is merely, as it states, a recitation of [respondent's] position regarding these children in an attempt to keep the court informed ...." *Id.*, p. 9.

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[9] Rule 1.501 (c) of the Florida Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Florida Rules of Court–State* (West, 1990 Ed.)

On October 17, 1989, the court affirmed the judgment of the Circuit Court without opinion. Appendix 3a. It did, however, cite several cases in support of its judgment, including *Parks v. City of Homestead*, 414 So. 2d 1142 (Fla. 3d DCA 1982) (verdict for police officer in false arrest suit upheld, where there was sufficient evidence for a jury to have found that officer reasonably believed that magistrate had requisite authority to issue warrant); *Owen v. City of Independence*, 445 U.S. 622, (1980)) (municipality may not assert the good faith immunity of its officers or agents as a defense to liability under Section 1983); *Penthouse, Inc. v. Saba*, 399 So. 2d 456 (Fla. 2d DCA 1981), review denied, 408 So. 2d 1095 (1981)) (Section 1983 action held properly dismissed, where challenge to county commissioners' refusal to approve a building plan involved no asserted violation of federal right); and *Chapman v. Dept. of Health and Rehabilitative Serv.*, 517 So. 2d 104, 105 (Fla. 3rd DCA 1987) (Section 1983 action does not lie against a state agency and its attorney for their role in imprisoning plaintiff for non-payment of child support, where plaintiff alleged only that they "had 'negligently' failed to determine that the apparently valid final judgment against [him] was void because he had not been personally served in the underlying action...").

On January 10, 1990 the court denied petitioner's motion for rehearing, or for rehearing *en banc*. Appendix 4a. Petitioner did not proceed to the Supreme Court of Florida because its discretionary jurisdiction is limited to the following classes of cases:

> (2) Discretionary Jurisdiction. The discretionary jurisdiction of the Supreme Court may be sought to review:
>
> (A) decisions of district courts of appeal that:
>
> (i) expressly declare valid a state statute;
>
> (ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Court, and:

(i) to be of great importance, or

(ii) to have a great effect on the proper administration of justice.

Rule 9.030 (a) (2), Florida Rules of Appellate Procedure, *Florida Rules of Court—State* (West, 1990 Ed.).

REASON FOR GRANTING THE WRIT

The State Court Decisions Are in Conflict With Immunity Principles Governing Actions Under 42 USC 1983

The elements of an action under 42 USC 1983 are well-established: "[A] plaintiff must allege the violation of a right secured by the constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law" (citation omitted). *West v. Atkins*, — U.S.—108 S.Ct. 2250, 2255 (1988).

Petitioner here alleged that a liberty interest long deemed fundamental, "the interest of a parent in the companionship, care custody, and management of...her children," *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), was extinguished without notice in violation of the Due Process Clause of the Fourteenth

Amendment. *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (decree granting stepfather's petition for adoption was entered in violation of the Fourteenth Amendment because the "failure to give [the child's father] notice of the pending proceeding violated the most rudimentary demands of due process of law").

She alleged, moreover, (1) that respondent "used state procedures to exercise functions pertaining to the taking of children into custody and removing them from their parents...[,] a function which was the exclusive prerogative of the State...,"[10] Amended Complaint, ¶30; and (2) that respondent "acted in concert with State officials, or obtained significant aid from State officials in conjunction with the unconstitutional taking of [petitioner's] four children."[11] *Id.*, ¶31.

Respondent did not challenge the fundamental nature of the asserted liberty interest, the process which was due petitioner under the Fourteenth Amendment, or suggest that these principles were any less firmly entrenched at the time the children were taken. Rather, it relied solely upon the existence of the orders in its file to insulate it from liability.

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[10] *See Duchesne v. Sugarman*, 566 F. 2d 817 (2d Cir. 1977) (private child care institutions falling withing New York statutory definition of "authorized agencies" empowered to take custody of children from state and city officials were acting under color of law).

[11] *See Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980) (otherwise private person acts "under color of" state law when engaged in a conspiracy with state judge to deprive another of federal rights); *Tower v. Glover*, 467 US 914, 920—921 (1984) (public defender acts under color of state law when engaged in conspiracy with state officials to deprive criminal defendant of federal rights).

The trial court made clear that its decision to hold respondent "immune from any litigation" depended entirely upon the existence of genuine signatures on orders purporting to terminate parental rights and to grant respondent permanent custody of the four children. Whether the orders were entered illegally, or indeed, whether they were entered at all; whether respondent knowingly participated with the Monroe County Juvenile Court judge to terminate petitioner's parental rights unlawfully; and whether it then concealed from petitioner facts which should have been available to her as a matter of right, these genuine issues of fact[12] were necessarily deemed inadequate as a matter of law to preclude entry of summary judgment.

The immunity thus afforded to respondent here was akin to the derivative judicial immunity claimed by the co-conspirator in *Dennis v. Sparks, supra*. A unanimous Court rejected the argument that in the absence of this derivative immunity "the [judge's] official immunity will be seriously eroded," *id.* at 29, for there is "nothing indicating that, historically, judicial immunity insulated from damages liability those private persons who corruptly conspire with the judge" (footnote omitted). *Ibid.*

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[12] *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (a "dispute about a material fact is 'genuine'...if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.")

Petitioner here presented "affirmative evidence", *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 257, evidence which was "to be believed, and [from which] all justifiable inferences [were] to be drawn in [her] favor" (citation omitted), *ibid.*, establishing a genuine issue as to whether respondent "corruptly conspire[d] with the judge", to secure custody of petitioner's children illegally.[13] The court thus erred in preventing petitioner from proceeding to trial under principles established in *Dennis v. Sparks*.[14]

The District Court of Appeal's *per curiam* order referred, in most relevant part, to *Owen v. City of Independence, supra*, in which the Court addressed the propriety of extending to municipalities the good faith immunity enjoyed by its officials; and to *Parks v. City of Homestead, supra*, a case in which the objective reasonableness of a police officer's reliance on a search warrant was at issue where the judge had subsequently been found to lack the requisite authority to issue the warrant. This suggests that it affirmed, not on the ground of a derivative judicial immunity, but on the ground of qualified immunity. This decision was no more tenable than the trial court's.

The affirmative defense of qualified immunity, *see Gomez v. Toledo*, 446 U.S. 635, 640 (1980), is a "shield[] from liability for civil damages insofar as [the] conduct does not violate clearly

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[13]She did so despite the denial of additional discovery after she managed to obtain a copy of respondent's letter to the judge. *Cf. ibid.* ("the plaintiff must present affirmative evidence...even where the evidence is likely to be within the possession of the defendant, so long as the plaintiff has had a full opportunity to conduct discovery.")

[14]A state court exercising jurisdiction of a Section 1983 claim, see *Martinez v. California*, 444 U.S. 277, 283, n. 7 (1980), rehearing denied, 445 U.S. 920 (1980), is bound to apply federal principles. *Id.* at 284, n. 8.

established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).[15] The Court recently explained:

> The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has been previously held unlawful, ... but it is to say that in the light of preexisting law the unlawfulness must be apparent. (citation omitted)

Anderson v. Creighton, — U.S. —, 107 S.Ct. 3034, 3039 (1987).

The fundamental nature of the liberty interest at stake was as apparent in 1960 as it is today. Parental rights had long been deemed "essential", *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); among the "basic civil rights of man", *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); and "far more precious...than property rights." *May v. Anderson*, 345 U.S. 528, 533 (1953). The right to notice, that "most rudimentary demand[] of due process...", *Armstrong v. Manzo*, 380 U.S. at 550, prior to the abridgment of any such an interest, was equally well-established: "[T]here can be no doubt that at a minimum [due process] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Ibid.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)).

In light of these well-established principles, the District Court of Appeal seems to have determined that it was objectively reasonable as a matter of law to rely on judicial authorization for the challenged conduct. This is a position similar to one

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[15]The rule on qualified immunity established in *Harlow*, a suit against federal officials is also applicable in actions brought against state officials under Section 1983. *Davis v. Scheur*, 468 U.S. 183, 194, n. 12 (1984)

advanced by the police officer in *Malley v. Briggs*, 475 U.S. 335, 345 (1986) sued when he allegedly applied for and obtained an arrest warrant in the absence of probable cause. He argued in part that his conduct had been *per se* objectively reasonable because "he [was] entitled to rely on the judgment of a judicial officer in finding that probable cause exist[ed] and hence issuing the warrant." *Id.*, 106 S.Ct. at 1098. The Court, however found that entitlement to qualified immunity does not turn on any such judicial imprimatur: "The...question is whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." (footnote omitted) *Ibid.*

A *per se* rule of qualified immunity is no more appropriate in this context, where the facts, viewed in the light most favorable to petitioner, *Anderson v. Liberty Lobby, Inc., supra*, 477 U.S. at 255, establish respondent's knowing participation with a judicial officer in the destruction of petitioner's parental rights.

The District Court of Appeal thus erred in denying petitioner a trial on her Section 1983 claims, the only means she now has of vindicating the liberty interest of a mother permanently deprived of her children. We respectfully submit that it failed to remember this Court's words in *Stanley v. Illinois*:

> The private interest...of a [woman] in the children she has [borne]..., undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of...her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.'"

Id., 405 U.S. at 651 (quoting *Kovacs v. Cooper*, 366 U.S. 77, 95 (1949))

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court review on *certiorari* the judgment of the District Court of Appeal of Florida, Third District affirming the trial court's entry of summary judgment; and that the Court reverse the judgment and remand the case for trial.

JOHN PATTON RACIN
1721 Lamont St. N.W.
Washington D.C. 20010
202 265–2516

Attorney for Petitioner

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.: 87-08837 CA 19

MARY CELESTE GRIFFING,
Plaintiff,

vs.

THE CHILDREN'S HOME SOCIETY OF
FLORIDA, INC.,
Defendant.

SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on January 23, 1989, on the Motion of the Defendant, THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC., for Summary Final Judgment, and the Court having heard argument of counsel and being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED as follows:

1. The Motion for Summary Final Judgment of the Defendant, THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC., is hereby granted.

2. Summary Final Judgment is hereby entered in favor of the Defendant, THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC., and the Plaintiff, MARY CELESTE GRIFFING, takes nothing by this action and that Defendant, THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC., go hence without day [sic] and shall recover costs from the Plaintiff in a sum to be determined by this Court at a later date.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 27 day of Jan., 1989.

/s/ JACK M. TURNER
CIRCUIT COURT JUDGE

Copies furnished to:

Jan L. Jacobowitz, Esquire
Ellen Leesfield, Esquire
William S. Reese, Esq.

FEB 1 1989

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT
JULY TERM, A.D. 1989

MARY CELESTE GRIFFING,
Appellant,

vs.

THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC.,
Appellee.

CASE NO. 89-461

Opinion filed October 17, 1989.

An Appeal from the Circuit Court for Dade County, Jack M. Turner, Judge.

Dunn, Dresnick, Lodish & Miller and Jan L. Jacobowitz and Helen L. Stone, for appellant.

Wicker, Smith, Blomqvist, Tutan, O'Hara, McCoy, Graham & Lane and Shelley H. Leinicke, for appellee.

Before SCHWARTZ, C.J., and BARKDULL and HUBBART, JJ.

PER CURIAM.

Affirmed. See Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969) [sic]; Parks v. City of Homestead, 414 So.2d 1142 (Fla. 3d DCA 1982); Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980); Penthouse, Inc. v. Saba, 399 So.2d 456 (Fla. 2d DCA 1981), review denied, 408 So.2d 1095 (1981); Chapman v. State Dep't of Health and Rehabilitative Servs., 517 So.2d 104 (Fla. 3d DCA 1987); Robertson v. Deak Perera (Miami), Inc., 396 So.2d 749 (Fla. 3d DCA 1981), review denied, 407 So.2d 1105 (Fla. 1981).

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1989
WEDNESDAY, JANUARY 10, 1990

MARY CELESTE GRIFFING,
Appellant,

vs.

THE CHILDREN'S HOME SOCIETY
OF THE STATE OF FLORIDA, INC.,
Appellee.

CASE NO. 89-461

Upon consideration, appellant's motion for rehearing and motion for rehearing en banc are hereby denied.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By /s/
Deputy Clerk

cc: Jan L. Jacobowitz
Shelley H. Leinicke

/ih

THE JUVENILE COURT
IN AND FOR MONROE COUNTY, FLORIDA

IN THE INTEREST OF
DEBRA MICHELE ANDERSON CASE NO. 438
A CHILD

ORDER OF COMMITMENT TO CHILD CARING AGENCY

WHEREAS Roberta Pettie, Child Welfare Supervisor, State Dep't Welfare of said County, has filed a petition under oath in this court alleging that Debra Michele Anderson is a dependent child within the intent and meaning of Chapter 26.880 Laws of Florida, Acts of 1951, and it appearing to the court that all persons entitled to notice of hearing have been duly notified thereof, and said child having been brought before the court, and due examination held, upon the evidence adduced at the hearing, the court finds:

That Debra Michele Anderson is a child within the jurisdiction of this court, found, living or domiciled in Monroe County, Florida, of the age of 7 years; that the said Debra Michele Anderson is a dependent child as defined by Section 29.01 of the Florida Statutes, by reason of the following facts: Wards [sic] of Court since 9/16/59; committed to care of Division of Children's Services, State Welfare since then. Father were [sic] duly searched for but unable to locate them[sic]. Mother has failed to present a plan for care of children, has served sentence in Federal Prison & is now returned. It is deemed in the best interest of child that she be placed with The Children's Home Society for care leading to permanent commitment for subsequent adoption. and it appearing to the court that it is for the best interest of said child that she be removed from the custody and control of her parent(s) the said Carl Wayne Anderson & Mrs. Jody Anderson alias Mrs. Judith Goldman and from the home and surroundings in which she is now situated, and the The Children's Home Society of Florida is duly licensed by the

Florida State Board of Public Welfare as a Child Caring Agency under the provisions of Section 409.06 Florida Statutes, 1941, and is willing to receive said child, therefore,

It is hereby ordered that the said Debra Michele Anderson be and she is hereby removed from the custody and control of her said parent(s) or C. W. Anderson & Jody Anderson alias Judith Goldman and committed to the care, custody and supervision of the said Child Caring Agency, the said Children's Home Society of Florida until the further order of this court, and jurisdiction of said child and of this case is hereby retained for the purpose of making such other orders herein as to the court may seem necessary.

WITNESS my hand as Judge and the seal of the Juvenile Court of Monroe County, Florida, this 7th day of April, 1960.

Received by /s/ Elanore C. Marien
By_____
_____
Title

/s/ Eva Warner Gibson
Judge of the Juvenile
Court of Monroe County,
Florida

ORDER OF PERMANENT COMMITMENT

IN THE JUVENILE COURT
IN AND FOR MONROE COUNTY, FLORIDA

IN THE INTEREST OF
DEBRA MICHELE ANDERSON CASE NO. 438
DEPENDENT Female CHILD

This cause came on to be heard before me upon the sworn petition filed by Roberta Pettie, Child Welfare Supervisor, State Dept. Welfare of Monroe County In the above entitled cause on the 7th day of April A.D., 1960, Carl Wayne Anderson, legal father having been duly searched for and not found; Roberta Pettie representing the Department of Public Welfare; Debra Michele Anderson dependent child and Judith Jean Donnelly aka Anderson aka Goldman mother having been before the Court and the Court finding that all persons entitled to notice of this hearing have been duly notified, or that the parent or parents of said child have duly surrendered said child to The Children's Home Society of Florida, a child placing agency licensed under the Laws of the State of Florida; and that said Debra Michele Anderson, having been born on or about the 20th day of December 1952, is dependent within the meaning and intent of the Laws of the State of Florida, and is a suitable child for adoption, and that it is manifestly to the best interests of said child that this order be made and entered. The Court further finds and determines that The Children's Home Society of Florida is a duly licensed child placing agency and that the said Society is willing to receive the said child into its permanent custody.

It is therefore ORDERED, ADJUDGED AND DECREED that the said dependent child be and is hereby permanently committed to the care and custody of the said The Children's Home Society of Florida for subsequent adoption.

It is further ORDERED, ADJUDGED AND DECREED that the said dependent child shall forthwith become the ward of, and the person of the said child shall be subject to the guardianship of The Children's Home Society of Florida, and said Society is hereby given the authority to place the said child in a family home for the purpose of adoption, and may become a party to any proceeding for the legal adoption of the said dependent child, and may consent thereto, and by its representative or attorney may appear in any court where such proceeding is pending, and participate therein as the guardian of said dependent child.

It is further ORDERED, ADJUDGED AND DECREED that the natural parent, or parents, of the said dependent child, and the legal guardian, if such there be, other than the said The Children's Home Society of Florida, and all other persons, are hereby jointly and severally permanently deprived of all rights to such child, all of which said rights are hereby declared permanently forfeited.

DONE AND ORDERED AT Key West, Monroe County, Florida, this 29th day of August A.D., 1961.

(A True Copy)

/s/ Eva Warner Gibson
JUDGE

/s/
Clerk

THE JUVENILE COURT
IN AND FOR MONROE COUNTY, FLORIDA

IN THE INTEREST OF
WAYNE ANDREW GOLDMAN CASE NO. 439
A CHILD

ORDER OF COMMITMENT TO CHILD CARING AGENCY

WHEREAS Roberta Pettie, Child Welfare Supervisor, State Dep't Welfare of said County, has filed a petition under oath in this court alleging that Wayne Andrew Goldman is a dependent child within the intent and meaning of Chapter 26.880 Laws of Florida Acts of 1961, and it appearing to the court that all persons entitled to notice of hearing have been duly notified thereof, and said child having been brought before the court, and due examination held, upon the evidence adduced at the hearing, the court finds:

That Wayne Andrew Goldman is a child within the jurisdiction of this court, found, living or domiciled in MONROE County, Florida, of the age of 6 years; that the said Wayne Andrew Goldman is a dependent child as defined by Section 30.01 of the Florida Statutes, by reason of the following facts: Wards [sic] of Court since 9/16/59; committed to care of Division of Children's Services, State Welfare since then. Father was duly searched for but not found. Mother has failed to present plan for care of child, has served sentence in Federal Prison & is now returned. Deemed in best interest of child that he be placed with The Children's Home Society for care leading to permanent commitment for subsequent adoption, and it appearing to the court that it is for the best interest of said child that he be removed from the custody and control of his parent(s) or legal custodian, the said Ronald J. Goldman & Jody Anderson alias Mrs. Judith Goldman and from the home and sur-

roundings in which he is now situated, and that The Children's Home Society of Florida is duly licensed by the Florida State Board of Public Welfare as a Child Caring Agency under the provisions of Section 409.06 Florida Statutes, 1941, and is willing to receive said child, therefore,

It is hereby ordered that the said Wayne Andrew Goldman be and he is hereby removed from the custody and control of his said parents(s) R. J. Goldman & Jody Anderson alias Mrs Judith Goldman and committed to the care, custody and supervision of the said Child Caring Agency, the said Children's Home Society of Florida until the further order of this court, and jurisdiction of said child and of this case is hereby retained for the purpose of making such other orders herein as to the court may seem necessary.

WITNESS my hand as Judge and the Seal of the Juvenile Court of Monroe County, Florida, this 7th day of April, 1960.

Received by /s/ Elanore C. Marien /s/ Eva Warner Gibson
Judge of the Juvenile Court
of Monroe County, Florida

ORDER OF PERMANENT COMMITMENT

IN THE JUVENILE COURT
IN AND FOR MONROE COUNTY, FLORIDA

IN THE INTEREST OF
WAYNE ANDREW GOLDMAN CASE NO. 439
DEPENDENT Male CHILD

This cause came on to be heard before me upon the sworn petition filed by Roberta Pettie, Child Welfare Supervisor, State Department of Welfare, of Monroe County.

In the above entitled cause on the 7th day of April A.D., 1960, Ronald Jay Goldman, legal father, having been duly searched for and not found; Judith Jean Donnelly Anderson Goldman, natural mother and Roberta Pettie representing State Department of Welfare and Wayne Andrew Goldman dependent child having been before the Court and the Court finding that all persons entitled to notice of this hearing have been duly notified, or that the parent or parents of said child have duly surrendered said child to The Children's Home Society of Florida, a child placing agency licensed under the Laws of the State of Florida; and that said Wayne Andrew Goldman, having been born on or about the 10th day of December 1953, is dependent within the meaning and intent of the Laws of the State of Florida, and is a suitable child for adoption, and that it is manifestly to the best interests of said child that this order be made and entered. The Court further finds and determines that The Children's Home Society of Florida is a duly licensed child placing agency and that the said Society is willing to receive the said child into its permanent custody.

It is therefore ORDERED, ADJUDGED AND DECREED that the said dependent child be and is hereby permanently committed to the care and custody of the said The Children's Home Society of Florida for subsequent adoption.

It is further ORDERED, ADJUDGED AND DECREED that the said dependent child shall forthwith become the ward of, and the person of the said child shall be subject to the guardianship of The Children's Home Society of Florida, and said Society is hereby given the authority to place the said child in a family home for the purpose of adoption, and may become a party to any proceeding for the legal adoption of the said dependent child, and may consent thereto, and by its representative or attorney may appear in any court where such proceeding is pending, and participate therein as the guardian of said dependent child.

It is further ORDERED, ADJUDGED AND DECREED that the natural parent, or parents, of the said dependent child, and the legal guardian, if such there be, other than the said The Children's Home Society of Florida, and all other persons, are hereby jointly and severally permanently deprived of all rights to such child, all of which said rights are hereby declared permanently forfeited.

DONE AND ORDERED AT Key West, Monroe County, Florida, this 29th day of August A.D., 1961.

Eva Warner Gibson
JUDGE

(A True Copy)

/s/
Clerk

ORDER OF PERMANENT COMMITMENT

IN THE JUVENILE COURT
IN AND FOR MONROE COUNTY, FLORIDA

IN THE INTEREST OF
ROBIN JEANETTE GOLDMAN CASE NO.
DEPENDENT Female CHILD

This cause came on to be heard before me upon the sworn petition filed by Mrs. Roberta Pettie, Child Welfare Supervisor, Florida Dept. of Public Welfare of Monroe County in the above entitled cause on the 4th day of February A.D., 1960, Mrs. Roberta Pettie, Child Welfare Supervisor, Florida Department of Public Welfare and Robin Jeanette Goldman having been before the Court and the Court finding that all persons entitled to notice of this hearing have been duly notified, or that the parent or parents of said child have duly surrendered said child to The Children's Home Society of Florida, a child placing agency licensed under the Laws of the State of Florida; and that said Robin Jeanette Goldman, having been born on or about the 15th day of April 1956, is dependent within the meaning and intent of the Laws of the State of Florida, and is a suitable child for adoption, and that it is manifestly to the best interests of said child that this order be made and entered. The Court further finds and determines that The Children's Home Society of Florida is a duly licensed child placing agency and that the said Society is willing to receive the said child into its permanent custody.

It is therefore ORDERED, ADJUDGED AND DECREED that the said dependent child be and is hereby permanently committed to the care and custody of the said The Children's Home Society of Florida for subsequent adoption.

It is further ORDERED, ADJUDGED AND DECREED that the said dependent child shall forthwith become the ward of,

and the person of the said child shall be subject to the guardianship of The Children's Home Society of Florida, and said Society is hereby given the authority to place the said child in a family home for the purpose of adoption, and may become a party to any proceeding for the legal adoption of the said dependent child, and may consent thereto, and by its representative or attorney may appear in any court where such proceeding is pending, and participate therein as the guardian of said dependent child.

It is further ORDERED, ADJUDGED AND DECREED that the natural parent, or parents, of the said dependent child, and the legal guardian, if such there be, other than the said The Children's Home Society of Florida, and all other persons, are hereby jointly and severally permanently deprived of all rights to such child, all of which said rights are hereby declared permanently forfeited.

DONE AND ORDERED AT Key West, Monroe County, Florida, this 7th day of April A.D., 1960

(A True Copy)

/s/ Eva Warner Gibson
JUDGE

ORDER OF PERMANENT COMMITMENT

IN THE JUVENILE COURT
IN AND FOR MONROE COUNTY, FLORIDA

IN THE INTEREST OF
ADRIENNE CELESTE GOLDMAN CASE NO.
DEPENDENT Female CHILD

This cause came on to be heard before me upon the sworn petition filed by Mrs. Roberta Pettie, Child Welfare Supervisor, Florida Dept. of Public Welfare, Monroe County.

In the above entitled cause on the 4th day of February A.D., 1960, Mrs. Roberta Pettie, Child Welfare Supervisor, Florida Department of Public Welfare and Adrienne Celeste Goldman having been before the Court and the Court finding that all persons entitled to notice of this hearing have been duly notified, or that the parent or parents of said child have duly surrendered said child to The Children's Home Society of Florida, a child placing agency licensed under the Laws of the State of Florida; and that said Adrienne Celeste Goldman, having been born on or about the 19th day of November, 1958, is dependent within the meaning and intent of the Laws of the State of Florida, and is a suitable child for adoption, and that it is manifestly to the best interests of said child that this order be made and entered. The Court further finds and determines that The Children's Home Society of Florida is a duly licensed child placing agency and that the said Society is willing to receive the said child into its permanent custody.

It is therefore ORDERED, ADJUDGED AND DECREED that the said dependent child be and is hereby permanently committed to the care and custody of the said The Children's Home Society of Florida for subsequent adoption.

It is further ORDERED, ADJUDGED AND DECREED that the said dependent child shall forthwith become the ward of, and the person of the said child shall be subject to the guardianship of The Children's Home Society of Florida, and said Society is hereby given the authority to place the said child in a family home for the purpose of adoption, and may become a party to any proceeding for the legal adoption of the said dependent child, and may consent thereto, and by its representative or attorney may appear in any court where such proceeding is pending, and participate therein as the guardian of said dependent child.

It is further ORDERED, ADJUDGED AND DECREED that the natural parent, or parents, of the said dependent child, and the legal guardian, if such there be, other than the said The Children's Home Society of Florida, and all other persons, are hereby jointly and severally permanently deprived of all rights to such child, all of which said rights are hereby declared permanently forfeited.

DONE AND ORDERED AT Key West, Monroe County, Florida, this 7th day of April A.D., 1960.

(A True Copy) /s/ Eva Warner Gibson

/s/ Isabel Fleming
Clerk

March 10, 1960

Hon. Eva Warner Gibson
Juvenile Court of Monroe County
Monroe County Court House
Key West, Fla.

Re: Children:
Debra Michele Anderson B. 12-20-52
Wayne Andrew Goldman B. 12-10-53
Robin Jeanette Goldman B. 4-15-56
Adrienne Celeste Goldman B.11-19-58

Dear Judge Gibson:

This will confirm my telephone conversation with you yesterday, March 9, 1960, regarding Judith Goldman's four children. As I stated on the telephone, we feel it is important that you know the position of The Children's Home Society of Florida regarding these children.

We have had Robin Jeanette and Adrienne Celeste, the two younger children, in one of our foster homes since January 19, 1960. Therefore, we know these children and have been in the process of a pre-adoptive evaluation. However, Debra Michele Anderson and Wayne Andrew Goldman were placed in the American Children's Home and we do not know them, inasmuch as we had not received our referral material on them until this week. For this reason it is necessary for us to say to you that we are not in a position to be able to accept permanent commitment on these two older children, namely, Debra and Wayne at this time.

However, we want you to know that we are very willing to have you give us temporary commitment on these two older children. If you can see fit to do this, we would then let you know when we have completed our pre-adoptive study on them and should this indicate that they are adoptable, we

would then send you a request for permanent commitment of the two older children.

Based on our present findings, we expect to send you our request for permanent commitment of Robin and Adrienne, the two younger children at the time of the hearing on March 23, 1960.

You will recall our discussion of the handling of this on the same basis as the H. _____Children, whom you committed to us under the same circumstances. Please be assured of our desire to work with you and Mrs. Pettie in the best interest of these dependent children. Perhaps I should say here that I expect to furnish some material to Mrs. Pettie regarding our experience of approximately two months with these two younger children.

I would appreciate your letting us know whether or not this plan is acceptable to you.

Sincerely yours,
(Mrs.) Elanore C. Marien
Supervisor
Southeastern Division

cc. Mrs. Roberta Pettie
FDPW, Key West, Fla.
Mrs. Dee Winterstrom
Bar Harbour 9, Miami

1951 Fla. Laws, c. 26880, §1
(current version at Fla. Stat. Sec. 39.401 (1988))

39.03 Taking a child into custody; detention.—

(1) No child shall be taken into custody without an order of the judge of the juvenile court of the county or district wherein the child is found, living, or domiciled, unless (a) the child is in such condition or surroundings that the welfare of the child requires that the child be immediately taken into custody, or (b) the child shall be alleged to have committed a violation of law. In case either of those special circumstances shall exist, any law enforcement officer whose duty it would be to do so if the child were an adult, and any counselor or assistant counselor, may take the child into custody without order of the judge.

* * *

(3) The person taking and retaining a child in custody shall notify the parents or legal custodians of the child at the earliest practicable time, and shall, without delay for the purpose of investigation or any other purpose, deliver the child, by the most direct practicable route, to the court of the county or district where the child is taken into custody, or, if the judge has so ordered, to a detention home or licensed child caring institution or county or city jail, within the county or district, designated by the judge, and shall at the earliest practicable time report in writing to the court the facts by reason of which the child was taken into custody....

1951 Fla. Laws, c. 26880, §1
(current version at Fla. Stat. 39.411 (1988))

39.12 Seal; records; privileged information.—

* * *

(2) The juvenile court shall make and keep records of all cases brought before it, and shall preserve the records pertaining to a child until ten years after the last entry was made, and may then destroy them, except that records of cases where orders were entered permanently depriving a parent of the custody of a child shall be preserved permanently....

(3) Juvenile court records shall not be public records, and shall not be open to inspection by the public. Records shall be inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child....

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No. 89-1579

In The

Supreme Court of the United States

October Term, 1989

MARY CELESTE GRIFFING,

Petitioner,

v.

THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, in a Section 1983 action brought by a woman whose liberty interest in the care and custody of her four children was extinguished in 1960 and 1961 by juvenile court orders reciting that she was given due notice of the proceedings, the not-for-profit, state licensed agency to whom the children were entrusted for foster care and/or adoption was entitled to summary judgment based upon immunity derived from these juvenile court orders, where in each instance the signature of the juvenile court judge executing the orders has been authenticated and where passage of time precludes either direct or collateral attack of the orders.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE AND FACTS 1

REASON THE PETITION SHOULD BE DENIED ... 5

1. Petitioner has not presented any evidence to challenge the summary final judgment that there was no Section 1983 violation by Respondent, The Children's Home Society. 5

2. Respondent, The Children's Home Society, acted reasonably and pursuant to the directives of juvenile court orders and therefore has no liability to Petitioner. 7

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) ...5, 7

Armstrong v. Manzo, 380 U.S. 545 (1965) 6

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 5, 7

Davis v. Scherer, 468 U.S. 183 (1984) 6

Dennis v. Sparks, 449 U.S. 24 (1980) 5

Duchesne v. Sugarman, 566 F.2d 817 (2nd Cir. 1977) 6

May v. Anderson, 345 U.S. 528 (1953) 6

STATUTES

§39.03, Florida Statutes (1951) 7

§63.182, Florida Statutes (1973) 7, 8

1955 Florida Laws, c. 29703, §1 9

1951 Florida Laws, c. 26880, §3 9

§90.202(6), Florida Statutes (1978) 9

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted in October 1959 for impersonating an officer in the United States Navy and was sentenced to three months imprisonment. Her Amended Complaint alleges that she placed her four children in the care of a babysitter prior to her incarceration. (R. 14-29)[1]

Contrary to the allegations of Petitioner's Complaint, court orders from the Juvenile Court of Monroe County, Florida, reflect that Petitioner's four children had become wards of the state on September 16, 1959 and were then committed to the care of the Division of Children's Services State Welfare. (R. 87-94) Thereafter, the court ordered that the children be placed with The Children's Home Society for care and adoption. The two younger children were received by The Children's Home Society on January 19, 1960 and placed in foster homes. (R. 87, 90) Welfare personnel initially placed the two older children with another service, American Children's Home, although The Children's Home Society was ultimately given authority by court order to place them for adoption. (R. 93, 94, 143) The Children's Home Society is a not-for-profit corporation which was incorporated under the laws of the State of Florida in 1902. It is duly licensed as a child placing agency.

The assertions of Petitioner's Complaint (that she had no knowledge of her children's whereabouts for approximately twenty-six years and was never contacted throughout the process for their commitment and adoption) are further refuted by the discovery in the trial

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[1] The symbol "R." refers to the record below.

court. The two juvenile court Orders of Commitment to Child Caring Agency dated April 7, 1960, (which relate to the commitment of the two older children, Debra Michelle Anderson and Wayne Andrew Goldman, each state that these children have been

> wards of Court since 9/16/59; committed to care of Division of Children's Services, State Welfare since then. Father was duly searched for but not found. Mother has failed to present a plan for care of child, has served sentence in Federal Prison and is now returned. It is deemed in the best interest of child that [they] be placed with The Children's Home Society for care leading to permanent commitment for subsequent adoption and it appearing to the court that it is for the best interest of said child that she be removed from the custody and control of her parent(s) the said Carl Wayne Anderson & Mrs. Jody Anderson alias Mrs. Judith Goldman and from the home and surroundings in which she is now situated, and the The Children's Home Society of Florida is duly licensed by the Florida State Board of Public Welfare as a Child Caring Agency under the provisions of Section 409.06 Florida Statutes, 1941, and is willing to receive said child. (R. 87, 90)

Before announcing these findings, the juvenile court orders first recite that all persons entitled to notice of the hearing were duly notified.

The orders of permanent commitment for these two children, both of which are dated August 29, 1961, again reference the earlier orders and as to each child the court then decreed

> It is therefore ordered, adjudged and decreed that the said dependent child is hereby permanently committed to the care and custody of the

> said The Children's Home Society of Florida for subsequent adoption.
>
> It is further ordered, adjudged and decreed that the said dependent child shall forthwith become the ward of, and the person of the said child said be subject to the guardianship of The Children's Home Society of Florida, and said Society is hereby given the authority to place the said child in a family home for the purpose of adoption, and may become a party to any proceeding for the legal adoption of the said dependent child, and may consent thereto, and by its representative or attorney may appear in any court where such proceeding is pending, and participate therein as the guardian of said dependent child.
>
> It is further ordered, adjudged and decreed that the natural parent, or parents, of the said dependent child, and the legal guardian, if such there is, other than the said The Children's Home Society of Florida, and all other persons, are hereby jointly and severally permanently deprived of all rights to such child, all of which said rights are hereby declared permanently forfeited. (R. 89, 92, 93, 94)

Once again, the juvenile court orders establish that Petitioner has proper notice of this proceeding because each order states:

> Legal father having been duly searched for and not found; . . . dependent child and Judith Jean Donnelly aka Anderson aka Goldman mother having been before the Court and the Court finding that all persons entitled to notice of this hearing have been duly notified, or that the parent or parents of said child have duly surrendered said child . . . (R. 89, 92)

Not only do the juvenile court orders reflect that Petitioner was notified of the commitment proceedings for these two children, the records also establish notification to her prior to the permanent commitment of the two younger children, Wayne Andrew Goldman and Adrienne Celeste Goldman, in orders dated August 29, 1961 and April 7, 1960. These orders of permanent commitment both state:

> Natural mother . . . and dependent child having been before the court and the court finding that all persons entitled to notice of this hearing having been duly notified . . . (R. 93, 94)

The signature on these various court orders was authenticated and its validity has never been disputed. (R. 145-146c) Copies of these court orders were part of the permanent records of Respondent, The Children's Home Society. Nothing in the orders, or any evidence submitted in the trial court, reflects that any representative of The Children's Home Society participated or was present at any of the commitment hearings or in any way influenced the court in issuance of the orders for committing these children for adoption. After completion of discovery establishing the authenticity of these various orders which directed Respondent's actions, Respondent moved for summary judgment. The trial court granted this motion which was affirmed, *per curiam*, by the Florida Third District Court of Appeal. No appeal was permitted from the *per curiam* decision to the Florida Supreme Court. Some twenty-six years after the children were permanently committed by juvenile court order to The Children's Home Society and were placed for adoption, Petitioner filed suit asserting that her children had been

wrongfully taken. The sole support for her complaint was the affidavit of Roberta Pettie, Child Welfare Supervisor, which disputed the contents of these orders which recited she was present at the commitment hearings. Because these orders were more than one year old, their contents were no longer subject to challenge.

REASON THE PETITION SHOULD BE DENIED

1. Petitioner has not presented any evidence to challenge the summary final judgment that there was no Section 1983 violation by Respondent, The Children's Home Society.

A plaintiff may not defeat a defendant's properly supported motion for summary final judgment in the absence of any evidence to support the allegations of the complaint. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Griffing's position in this case is fatally flawed by her failure to recognize this settled law.

Griffing has cited a number of cases identifying what facts one must allege to state a claim for an action "under color of state law" which are not dispositive of the instant case. The instant case is not concerned with the dismissal of a complaint or whether it stated a cause of action, rather, the petition challenges the propriety of a summary judgment entered by the trial court where the evidence uniformly refuted all material factual allegations of the complaint. Because of this critical factual distinction, Griffing's reliance on the cases of *Dennis v. Sparks*, 449

U.S. 24 (1980) and *Duchesne v. Sugarman*, 566 F.2d 817 (2nd Cir. 1977) is misplaced.

The evidence in the trial court established that the juvenile court had issued orders regarding the temporary and permanent commitment of these children and that the Division of Children's Services, State Welfare Department, was responsible for their taking. The children were not delivered to the care of The Children's Home Society until months after they had been taken by the state and declared to be wards of the state. The juvenile court orders further recite that Petitioner had notice of all the juvenile court proceedings. For this reason, the cases of *Armstrong v. Manzo*, 380 U.S. 545 (1965) (failure to give mother notice of adoption proceedings violates due process), *Duchesne v. Sugarman, supra* (custody must be based on parental consent or court order) and *May v. Anderson*, 345 U.S. 528 (1953) (mother could not be denied custody where the court lacked personal jurisdiction over the mother and she did not appear or take part in the proceeding) are factually distinguishable and do not control.

Even if one assumes, *arguendo*, that The Children's Home Society had participated in the commitment of the four children, the facts established that such actions were privileged and that Respondent was entitled to summary final judgment in its favor because "even defendants who violate constitutional rights enjoy a qualified immunity that protects them from liability for damages unless it is further demonstrated that their conduct was unreasonable under the applicable standard." *Davis v. Scherer*, 468 U.S. 183, 190 (1984). The evidence before the court established that Petitioner had been given notice of all commitment proceedings. The bare contrary allegations in

Petitioner's complaint are insufficient to avoid summary judgment in the face of this evidence. *Celotex Corp. v. Catrett, Anderson v. Liberty Lobby, Inc., supra.*

2. Respondent, Children's Home Society, acted reasonably and pursuant to the directives of juvenile court orders and therefore has no liability to Petitioner.

The record affirmatively establishes that the orders of the juvenile court, which were entered more than two decades prior to the instant litigation, were the basis of all actions by The Children's Home Society. These orders established the legal foundation for the commitment of these children. §39.03, Fla. Stat. (1951). The orders are not subject to dispute or attack because more than one year has elapsed since their entry. §63.182, Fla. Stat. (1973).

The factual recitations in those orders unequivocally establish that Petitioner's children became wards of the court on September 16, 1959 and only later were they committed by the juvenile court to the care of Children's Services, State Welfare Department. Two children were initially placed with The American Children's Home, which has never been a party to this suit. Petitioner's children were therefore already wards of the state at the time of the 1960 and 1961 hearings where their commitment or adoption was authorized. These orders plainly state that The Children's Home Society was not responsible for "taking" these children in the first instance and that all actions of the Respondent were at the specific direction of the juvenile court.

These orders further establish that Petitioner had notice of all proceedings. Neither Petitioner, nor Roberta Pettie (the welfare supervisor on the case) can now contest these recitations. The suggestion of "irregularities" in these orders as asserted by Ms. Pettie is insufficient to create questions of fact or liability as to The Children's Home Society, particularly where there is no indication in the record that The Children's Home Society was present or a participant at any of these hearings. The passage of time stands as a bar to asserting any irregularity or procedural defect in any of the proceedings and precludes either direct or collateral attack. §63.182, Fla. Stat. (1973).

Further, the unchallenged evidence unequivocally establishes that these juvenile court orders were signed by a judge of the juvenile court. The affidavit of a handwriting expert, whose opinion was undisputed, states that the signature on the orders is in fact that of the then juvenile court Judge Eva Warner Gibson. Each of the six orders relating to the temporary and permanent commitment of Petitioner's four children was individually examined as part of this handwriting expert's analysis.

Even if the recitation of notice to Petitioner in the various juvenile court orders could be attacked, Petitioner still cannot surmount the fact that The Children's Home Society was not responsible for notifying her of any of these hearings nor can she avoid the fact that all actions of The Children's Home Society were, according to the statements of the juvenile court, done at the direction of the court pursuant to its orders after the children had already been taken into custody.

Petitioner asserts that a claim was stated because The Children's Home Society did not give her information regarding the location of her children. This overlooks the fact that the Respondent was statutorily precluded from releasing such information. 1955 Fla. Laws, c. 29703, §1 (current version at §63.162, Fla. Stat. (1989).

Petitioner has further suggested that the fact she could not locate the relevant juvenile court files in 1987, more than twenty-five years after the juvenile court ordered the children's permanent commitment, should have prevented The Children's Home Society from relying on copies of those juvenile court orders which it received in 1960 and 1961. This position is without merit. There is no requirement that The Children's Home Society must confirm the existence of a file in the courthouse before it can rely upon an order which is duly signed by a sitting judge of the juvenile court. Further, juvenile court records are not maintained as public records and are not open to inspection by the public. 1951 Fla. Laws, c. 26880 §3 (current version §39.411 (Fla. Stat. (1988)). Her further suggestion that some significance should be attached to the lack of certification on these juvenile court orders is similarly groundless. As court records, the contents of these orders may be judicially noted and certification was unnecessary. §90.202(6) Fla. Stat. (1978).

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that Celeste Griffing's Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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